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IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

STATE OF IDAHO,

Plaintiff-Respondent,

vs.

KRISTINA MARIE QUINTANA, aka
KING,

Defendant-Appellant.

NO. 39049, 39156

BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF ADA**

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District Judge**

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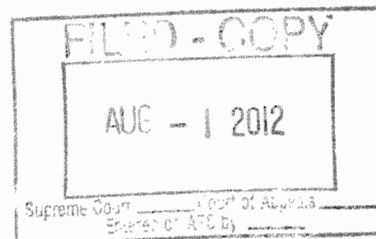


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STATEMENT OF THE CASE

Nature of the Case

In a consolidated appeal, Kristina M. Quintana appeals from the sentences imposed upon her guilty pleas to grand theft (Docket No. 39049); burglary, and two counts of grand theft by possession of stolen property (Docket No. 39156). Quintana also challenges the Idaho Supreme Court's order denying her motion to augment the appellate record with her co-defendant's PSI.

Statement of Facts and Course of Proceedings

In March 2010, Quintana, then a student at Brown Mackie College in Boise, stole her writing composition professor's wallet when the professor briefly left the room during class. (#39049 PSI, 283-286.¹) Quintana used a credit card from the wallet to make purchases at a local gas station and a Pizza Hut, and to purchase wedding invitations online. (Id.) After a subsequent investigation revealed Quintana was responsible for the theft and fraudulent credit card charges, the state filed a criminal complaint and a warrant was issued for Quintana's arrest. (#39049 R., pp.5-10; #39049 PSI, pp.283-286.) Before she could be arrested, Quintana left Boise for New Mexico. (#39049 PSI, pp.278-280, 264.)

¹PSI page numbers correspond with the page numbers of the respective "QuintanaPSI.pdf" electronic files. The PSIs from both Docket No. 39049 and Docket No. 39156 have the same "QuintanaPSI.pdf" electronic file name.

In December 2010, a Boise resident observed Quintana, Shauntel King, and another individual walk around a neighbor's house and into the back yard. (#39049 PSI, pp.42, 99.) Soon after, the witness saw the individuals flee the area in their vehicle at a high rate of speed. (Id.) The neighbors returned to their residence to find that it had been ransacked, and that several items had been stolen, including a credit card. (#39049 PSI, p.42.) Police officers were able to track subsequent credit card charges, review store surveillance video, and obtain a description of Quintana and her vehicle from the witness. (#39049 PSI, pp.42-62.) From this investigation, officers identified Quintana as one of the individuals involved in the burglary. (Id.)

Officers then obtained and executed a search warrant for Quintana's residence. (#39049 PSI, pp.239-246.) There, officers arrested Quintana, King, and the other individual, and recovered stolen property and other evidence tying Quintana to multiple other recent home and vehicle burglaries in the area. (#39156 PSI, pp.63-276.) Quintana had stolen electronics, credit cards, checks, purses and jewelry, and had fraudulently used the credit cards and checking account numbers to make purchases. (Id.)

For the March 2010 theft and fraudulent use of her college professor's credit card (Docket No. 39049), the state charged Quintana with grand theft and two counts of grand theft by unauthorized control. (#39049 R., pp.26-27.) Pursuant to a plea agreement, Quintana pled guilty to grand theft, and the state

dismissed the remaining charges. (#39049 R., pp.53-57; see generally, 6/9/11 Tr.) The district court imposed a unified sentence of 14 years with three years fixed. (#39049 R., pp.53-57.)

For the series of December 2010 Boise burglaries (Docket No.39156), the state charged Quintana with six counts of burglary, six counts of grand theft, and six counts of grand theft by possession of stolen property. (#39156 R., pp.73-78.) Pursuant to a plea agreement, Quintana pled guilty to one count of burglary, and two counts of grand theft by possession of stolen property, and the state dismissed the remaining charges. (#39156 R., pp.111-114; see generally 4/27/11 Tr.) On the burglary charge, the district court imposed a unified 10-year sentence with four years fixed. (#39156 R., pp.111-114.) On each of the grand theft by possession of stolen property charges, the district court imposed a unified 14-year sentence with four years fixed. (Id.) The district court ran one of the grand theft by possession of stolen property sentences consecutively to the other two sentences. (Id.) The district court ran the other two sentences concurrently. (Id.) This resulted in an aggregate unified sentence of 20 years with eight years fixed, which the district court ran concurrently with Quintana's sentence in the grand theft case. (Id.)

Quintana timely appealed her sentences in both cases, and the Idaho Supreme Court granted her motion to consolidate the cases for appeal. (#39049 R., pp.60-62; #39156 R., pp.117-119; 12/28/11 Order.) Quintana also filed an

I.C.R. 35 motion for reduction of her sentences for the December 2010 Boise burglaries (Docket No. 39156), which the district court denied. (#39156 R., pp.121-141)

On the day Quintana's Appellant's brief was due on second extension (2/1/2012 Order Granting Extension of Time), she made a motion to suspend the briefing schedule and augment the appellate record with King's PSI, which the district court referenced during one of the sentencing hearings, and with the remainder of an incomplete letter of support submitted with Quintana's I.C.R. 35 motion for reduction of sentence. (3/6/12 Motion.) The Idaho Supreme Court denied the motion. (4/4/12 Order.)

ISSUES

Quintana states the issues on appeal as:

1. Whether the district court in case number 39156 abused its discretion when it imposed an aggregate sentence of twenty years, with eight years fixed, upon Ms. Quintana following her plea of guilty to burglary and grand theft by possession of stolen property.
2. Whether the district court in case number 39156 abused its discretion when it denied Ms. Quintana's Rule 35 motion in light of the new evidence she presented.
3. Whether the district court in case number 39049 abused its discretion when it imposed a unified sentence of fourteen years, with three years fixed, upon Ms. Quintana following her plea of guilty to grand theft[.]
4. Whether the Idaho Supreme Court denied Ms. Quintana due process and equal protection when it denied her Motion to Augment with Ms. King's PSI in light of the district court's express consideration of that information[.]

(Appellant's brief, p.9)

The state rephrases the issues on appeal as:

1. Has Quintana failed to show the district court abused its sentencing discretion in either Docket No. 39049 or Docket No. 39156?
2. Has Quintana failed to show the district court abused its discretion by denying her I.C.R. 35 motion in Docket No. 39156?
3. Does this Court lack the authority to review the Idaho Supreme Court's decision to deny Quintana's motion to augment the record?

ARGUMENT

I. Quintana Has Failed To Show The District Court Abused Its Sentencing Discretion

A. Introduction

Quintana asserts that the district court abused its discretion when it imposed a unified sentence of 14 years with three years fixed upon her guilty plea to grand theft (Docket No. 39049); a unified sentence of 10 years with four years fixed upon her guilty plea to burglary, and unified sentences of 14 years with four years fixed upon her guilty pleas to two counts of grand theft by possession of stolen property (Docket No. 39156). (Appellant's brief, pp.10-21, 24.) Quintana has failed to establish an abuse of discretion.

B. Standard Of Review

When a sentence is within statutory limits, the appellate court will review only for an abuse of discretion.. State v. Farwell, 144 Idaho 732, 736, 170 P.3d 397, 401 (2007). The appellant has the burden of demonstrating that the sentencing court abused its discretion. Id.

C. The District Court Acted Well Within Its Sentencing Discretion

To bear the burden of demonstrating an abuse of discretion, the appellant must establish that, under any reasonable view of the facts, the sentence is excessive. Farwell, 144 Idaho at 736, 170 P.3d at 401. To establish that the

sentence is excessive, he must demonstrate that reasonable minds could not conclude the sentence was appropriate to accomplish the sentencing goals of protecting society, deterrence, rehabilitation, and retribution. Id. Idaho appellate courts presume that the fixed portion of a sentence will be the defendant's probable term of confinement. State v. Trevino, 132 Idaho 888, 980 P.2d 552 (1999).

In this case, both district courts recognized and applied the appropriate sentencing factors. (7/28/11 Tr., p.39, Ls.14-21; 8/24/11 Tr., p.37, L.22 – p.38, L.12) Both courts properly considered protection of society as a primary factor shaping their respective sentences. (7/28/11 Tr., p.39, L.14 – p.40, L.1, p.46, Ls.2-10; 8/24/11 Tr., p.46, L.21 – p.47, L.3.)

Both district courts referenced Quintana's prior criminal history. (7/28/11 Tr., p.39, L.22 – p.40, L.9; 8/24/11 Tr., p.40, L.20 – p.42, L.3.) According to records from the PSI documenting her mental health history, Quintana first entered the juvenile criminal system in New Mexico at the age of 14 when she got into a fight with her adoptive mother. (#39049 PSI, p.12.) At the age of 16, she stole checks from her adoptive mother, and was charged with felony forgery and placed on probation, which she violated. (Id.) In 2009, Quintana, then 21 years old, was charged with forgery and identity theft, and was placed on unsupervised probation for two years. (#39049 PSI, pp.11,13.) She was still on probation when she committed the instant offenses. Quintana acknowledged to

the presentence investigator that, by the age of 16, she was associated with the "Latin Queens" gang. (#39049 PSI, p.17.) Quintana stated that she was formerly "pretty active" in the gang - selling drugs and "running" things - but she claimed that she has more recently cut her gang ties. (Id.)

Due in part to Quintana's extensive criminal history, both sentencing courts had access to a multitude of various psychological and behavioral evaluations to consider. (See generally #39049 PSI; #39156 PSI.) Specifically, the PSIs in these cases contained a 2011 Idaho Health and Welfare discharge profile and client diagnosis with treatment notes, a 2011 Idaho Standard Mental Health Assessment, a 2005 Mesilla Valley Hospital patient discharge summary and psychiatric admission history, and a 2005 psychological evaluation. (Id.) Both district courts reviewed and discussed this information prior to imposing sentence. (7/28/11 Tr., p.39, L.14 – p.46, L.1; 8/24/11 Tr., p.38, L.13 – p.39, L.22, p.45, L.21 – p.46, L.14.)

Further, the record reveals that the individual characteristics of both cases warranted the respective sentences imposed:

1. Docket No. 39049

In Docket No. 39049, Quintana pled guilty to grand theft and the state agreed to dismiss two counts of grand theft by unauthorized control. (#39049 R., pp.53-57; see generally, 6/9/11 Tr.) The district court entered a unified sentence of 14 years with three years fixed. (#39049 R., pp.53-56.)

In this case, Quintana brazenly stole her college professor's wallet from a classroom, when the professor briefly left the room to retrieve a class roster and other work materials. (#39049 PSI, p.283.) Quintana then left the class and used her professor's credit card to purchase invitations for her planned wedding to her co-defendant in the December burglaries, Shauntel King. (#39049 PSI, pp.283-285.) Shortly thereafter, Quintana also made purchases at a Chevron and a Pizza Hut. (Id.) As a result, the professor was required to close several credit card accounts. (#39049 PSI, p.284.) Very shortly after the theft, before she could be arrested, Quintana left for New Mexico. (#39049 PSI, p.286.) Quintana's opportunistic victimization of individuals she happens to come into contact with make her a significant danger to the community at-large.

The district court thoroughly discussed and considered Quintana's mental health issues. (7/28/11 Tr., p.39, L.14 – p.46, L.1.) In fact, the district court expressly noted that while it intended to impose a five-year fixed sentence, it ultimately decided to impose only three years fixed due the mental health information contained in the PSI. (7/28/11 Tr., p.46, Ls.2-10.) However, the district court still recognized Quintana's danger to the community in imposing a lengthy indeterminate sentence, stating, "I want somebody to be able to put you in prison for a long time so that you don't create new victims." (7/28/11 Tr., p.46, Ls.7-10.)

On appeal, Quintana acknowledges that the district court sufficiently considered her mental health issues. (Appellant's brief, p.24.) However, Quintana contends that the court "could have imposed a more lenient sentence based on a sufficient consideration of the other mitigating factors present in this case." (Id.) However, a review of the record reveals that the district court reviewed and considered the voluminous presentence investigation report and attachments made available to it, and there is nothing in the record to indicate that the district court either disregarded mitigating factors or based its sentence on anything but an appropriate balancing of the relevant sentencing factors.

In light of the nature of her crime, the impact on her victim, her extensive criminal history, and the district court's express consideration of the appropriate sentencing factors, Quintana has failed to meet her burden of demonstrating that, under any reasonable view of the facts, her sentence is excessive.

2. Docket No. 39156

In Docket No. 39156, Quintana pled guilty to one count of burglary and two counts of grand theft by possession of stolen property. (#39156 R., pp.111-115; see generally 4/27/11 Tr.) Pursuant to a plea agreement, the state dismissed 15 other theft-related felony charges. (#39156 R., pp.111-115; see generally 4/27/11 Tr.) On the burglary charge, the district court imposed a unified 10-year sentence with four years fixed. (#39156 R., pp.111-114.) On each of the grand theft by possession of stolen property charges, the district

court imposed a unified 14-year sentence with four years fixed. (Id.) The district court ran one of the grand theft by possession of stolen property sentences consecutively to the other two sentences, and ran the other two sentences concurrently. (Id.)

In this case, Quintana and King embarked on a brash crime spree in December 2010 that victimized many Boise residents. (#39049 PSI, pp.42-276.) These victims were forced to cancel financial accounts, repair their credit history, make insurance claims, and deal with the resulting mental toll. (Id.; 8/24/11 Tr., p.21, L.22 – p.28, L.14.) A 5-year old child of one of the victim families was traumatized by the incident and was in counseling at the time of sentencing. (8/24/11 Tr., p.22, L.16 – p.23, L.7.) Another victim family was in Arizona to attend to a terminally ill parent at the time Quintana burglarized their home – they had to leave their parent and return to Idaho to address Quintana's crime before returning to Arizona. (8/24/11 Tr., p.25, Ls.1-20.) One of the other victims is a participant in the Ada County drug court program. (8/24/11 Tr., p.28, Ls.1-14.) In all, the prosecutor, who incorporated the thoughts of the victims into his sentencing argument in lieu of the victims making impact statements at sentencing (8/24/11 Tr., p.21, Ls.8-14), mentioned approximately 30 individuals who were victimized by Quintana during this crime spree (id.; 8/24/11 Tr., p.21, L.22 – p.28, L.14).

In sentencing Quintana, the district court referenced Quintana's attitude, demeanor at the sentencing hearing, and her lack of remorse for her crimes. The court described Quintana as "probably one of the more manipulative defendants I've ever seen in front of me." (8/24/11 Tr., p.39, Ls.23-25.) The court twice referenced Quintana's demeanor at the sentencing hearing, and observed that Quintana had "absolutely zero remorse," and was a "young lady who doesn't care that she's hurt a whole series of people." (8/24/11 Tr., p.40, Ls.1-4; p.42, L.18 – p.43, L.12.)

The district court also discussed Quintana's deceptive behavior following her arrest on the present charges. (8/24/11 Tr., p.42, L.2 – p.45, L.20.) Just two days before Quintana was first scheduled to be sentenced in this case, a letter purporting to be from a New Mexico doctor was dropped off at the Ada County Courthouse Clerk's office. (#39156 R., pp.139-140; #39156 PSI pp.50-88.) The letter stated that Quintana was undergoing a "high risk" pregnancy, was in New Mexico, and could not travel. (#39156 R., pp.139-140; #39156 PSI pp.50-88.) However, surveillance footage from the courthouse showed it was Quintana and another individual who dropped off the letter. (#39156 R., pp.139-140; 8/24/11 Tr., p.43, L.13 – p.44, L.17.) Quintana did not appear at her sentencing hearing, and the district court issued a bench warrant for her arrest. (#39156 R., pp.97-98.)

Shortly after she was arrested, Quintana complained of medical symptoms to the jail staff. (#39156 PSI pp.52-53, 87-88.) She claimed she was pregnant, and presented the jail staff with the letter she had given to the court clerk's office. (Id.) Quintana was transported to the St. Alphonsus Emergency Room, where medical personnel determined she was not currently pregnant, and had not recently been pregnant. (Id.) Jail staff then contacted the doctor named on Quintana's letter, who informed them that Quintana was not currently her patient, that she did not currently work at the hospital named on the letter, and that the signature on the letter was a forgery. (Id.) Quintana eventually admitted to jail staff that the letter was forged. (Id.) Quintana then wrote a letter to the sentencing court, in which she apologized for submitting the forged letter, but claimed that she had not forged the letter herself, and that she was unaware the letter was forged when she submitted it. (#39156 PSI pp.56-60, 87-88.) Instead, Quintana still claimed that she was actually pregnant, and that she asked her friend to obtain a legitimate doctor's letter from New Mexico, but the friend, unknowingly to Quintana, provided her a forged letter instead. (Id.)

In its investigative report, the jail noted that Quintana's deceit resulted in wasted time and resources of the jail staff, and costs to the county for the unnecessary trip to the emergency room. (#39156 PSI p.53, 88.) As the district court recognized, this behavior evidenced Quintana's desire and willingness to manipulate others through deceit, and to attempt to escape consequences for

her actions and to obtain preferential treatment. (8/24/11 Tr., p.43, L.13 – p.45, L.20.) The incident also clearly demonstrated Quintana's lack of potential for success on community supervision.

On appeal, Quintana alleges that the district court did not sufficiently consider mitigating factors, including Quintana's mental health issues. (Appellant's brief, pp.10-21.) To the contrary, the record reveals that the district court reviewed and considered the available evaluations and other information contained in the PSI and its attachments. (8/24/11 Tr., p.38, L.13 – p.39, L.25; p.41, Ls.17-20; p.45, L.21 – p.46, L.14.) While it did not view Quintana's mental health history in the precise manner Quintana may have wished it to, it does not follow that the district court's sentence is excessive.

In its memorandum decision denying Quintana's I.C.R. 35 motion, the district court noted that it had considered mitigating and aggravating factors in this case as well as Quintana's mental health issues in sentencing her. (#39156 R., p.139.) At the sentencing hearing itself, the district court discussed Quintana's mental health assessments and how they shed light on Quintana's manipulative and criminal behavior:

And this psychologist opined this, he said, "This is a young woman of average intelligence without marked psychiatric difficulty who is believed to be a low risk for engaging in dangerous behavior and quite amendable to treatment. In contrast she has a five-year history of loyalty to a deviant peer group, drug use and some antisocial behavior that has contributed to her now underdeveloped academic skills. It is suspected that most of her past and current difficulties are the end result" - and this is the part that I thought

was interesting - "the end result of lenient parenting practices that may have led Kristina to believe that there would never be consequences for many of her actions."

And I think that's – and his actual diagnosis was again spot on, disruptive behavior disorder, adolescent antisocial behavior as well as cocaine use. And she also was at the same time diagnosed with oppositional defiant disorder.

The main reason I start off with that is that Miss Quintana is probably one of the more manipulative defendants I've seen in front of me.

(8/24/11 Tr., p.39, Ls.2-25.)

The district court clearly considered Quintana's mental health issues. On appeal, Quintana appears to suggest that the district court in Docket No. 39156 abused its discretion because, unlike the district court in Docket No. 39049, it did not expressly reduce Quintana's sentence based on her mental health issues, or otherwise discuss these issues in the same manner that the other district court did. (Appellant's brief, pp.10-21.) However, the fact that two district courts addressed Quintana's mental health issues somewhat differently at their respective sentencing hearings does not exhibit an abuse of discretion. Instead, Quintana must show that the district court's sentence is excessive under *any* reasonable view of the facts, a burden she has failed to meet.

In light of the nature of her crimes, the impact on her victims, her extensive criminal history, her continuing deceit to the court and jail personnel following her arrest, her lack of remorse, and the district court's express consideration of the appropriate sentencing factors, Quintana has failed to meet

her burden of demonstrating that, under any reasonable view of the facts, her sentence is excessive.

II.

Quintana Has Failed To Show The District Court Abused Its Sentencing Discretion By Denying Her Rule 35 Motion In Docket No. 39156

If a sentence is within applicable statutory limits, a motion for reduction of sentence under Rule 35 is a plea for leniency, and this Court reviews the denial of the motion for an abuse of discretion. State v. Huffman, 144 Idaho, 201, 203, 159 P.3d 838, 840 (2007). To prevail on appeal, Quintana must “show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the Rule 35 motion.” Id.

The only “new” information Quintana provided in support of her I.C.R. 35 motion was several additional letters in support from friends and relatives, and a letter from herself in which Quintana discussed her difficulty in obtaining rehabilitative treatment in prison. (#39156 R., pp.121-136.) Specifically, Quintana claimed that, because of the number of prisoners currently incarcerated, she was not eligible to participate in any prison rehabilitative classes until there was only six months left on her fixed prison term. (#39156 R., pp.131-132.)

The district court considered Quintana's motion and wrote a memorandum opinion denying it. (#39156 R., pp.137-140.) The court reviewed and summarized the rationale behind its original sentence and concluded that the

sentence was still appropriate despite Quintana's plea for leniency. (Id.) Any difficulty in participating in rehabilitative treatment at this point in her prison term, even if true, certainly did not alleviate the district court's primary concern in sentencing Quintana and imposing a relatively significant fixed term – the protection of the community. Quintana has failed to establish an abuse of discretion.

III.

If This Case Is Assigned To The Idaho Court Of Appeals, That Court Lacks The Authority To Review The Idaho Supreme Court's Decision To Deny Quintana's Motion To Augment The Record In Docket No. 39156

A. Introduction

Quintana contends that by denying her motion to augment the appellate record with King's PSI, the Idaho Supreme Court violated her constitutional rights to due process and equal protection and has effectively denied her effective assistance of counsel on appeal. (Appellant's brief, pp.24-28.) Should this case be assigned to The Idaho Court of Appeals, however, that Court lacks the authority to review the Idaho Supreme Court's decision to deny Quintana's motion. Further, even if the Idaho Supreme Court's denial of Quintana's motion is reviewed on appeal, Quintana has failed to establish a violation of her constitutional rights.

B. The Idaho Court Of Appeals, Should It Be Assigned This Case, Lacks The Authority To Review The Idaho Supreme Court's Decision

Recently, the Idaho Court of Appeals “disclaim[ed] any authority to review, and, in effect, reverse an Idaho Supreme Court decision made on a motion made prior to assignment of the case to [the Idaho Court of Appeals] on the ground that the Supreme Court decision was contrary to the state or federal constitutions or other law.” State v. Morgan, 2012 WL 2782599 * 2 (Ct. App. 2012). Such an undertaking, the Court explained, “would be tantamount to the Court of Appeals entertaining an ‘appeal’ from an Idaho Supreme Court decision and is plainly beyond the purview of this Court.” Id.

However, the Idaho Court of Appeals did leave open the possibility of review of such motions in some circumstances. Id. Such circumstances may occur, the Court indicated, where “the completed briefs have refined, clarified, or expanded issues on appeal in such a way as to demonstrate the need for additional records or transcripts, or where new evidence is presented to support a renewed motion.” Id.

In the present case, however, the briefing has not demonstrated the need for King's PSI in the appellate record, and Quintana has not provided new evidence to support any renewed motion. Quintana's argument in her Appellant's brief as to why the record should be augmented with King's PSI is the same argument she presented to the Idaho Supreme Court in her motion – that the district court referenced King's PSI once during the sentencing hearing.

(Appellant's brief, pp.24-28; 3/6/12 Motion to Augment and to Suspend the Briefing Schedule and Statement in Support Thereof.) Because the Idaho Court of Appeals the authority to review, and in effect, reverse a decision of the Idaho Supreme Court, and because Quintana has failed to provide any new evidence or clarification in her Appellant's brief that would permit the Idaho Court of Appeals to do so, the Idaho Court of Appeals must decline, if it assigned this case, to review the Idaho Supreme Court's denial of Quintana's motion to augment the record.

C. Even If The Merits Of Quintana's Argument Are Reviewed On Appeal, Quintana Has Failed To Show The Idaho Supreme Court Violated Her Constitutional Rights

A defendant in a criminal case has a right to “a record on appeal that is sufficient for adequate appellate review of the errors alleged regarding the proceedings below.” State v. Strand, 137 Idaho 457, 462, 50 P.3d 472, 477 (2002) (citing Draper v. Washington, 372 U.S. 487 (1963); Lane v. Brown, 372 U.S. 477 (1963); Eskridge v. Washington State Bd. Of Prison Terms and Paroles, 357 U.S. 214 (1958); Griffin v. Illinois, 351 U.S. 12 (1956)). The state, however, “will not be required to expend its funds unnecessarily” to provide transcripts or other items that “will not be germane to consideration of the appeal.” Draper, 372 U.S. at 495; see also M.L.B. v. S.L.J., 519 U.S. 102, 112 n.5 (1996) (“an indigent defendant is entitled only to those parts of the trial record that are

germane to consideration of the appeal” (internal citations omitted)); Lane, 372 U.S. 477; Griffin, 351 U.S. 12.

To demonstrate that the record is not sufficient, the defendant must show that any omissions from the record prejudiced her ability to pursue the appeal. State v. Polson, 92 Idaho 615, 620-21, 448 P.2d 229, 234-35 (1968) (distinguishing Martinez v. State, 92 Idaho 148, 438 P.2d 893 (1968)). See also United States v. Smith, 292 F.3d 90, 93 (1st Cir. 2002). To show prejudice Quintana “must present something more than gross speculation that [the PSI was] requisite to a fair appeal.” Scott v. Elo, 302 F.3d 598, 605 (6th Cir. 2002). Quintana has failed to carry this burden.

Quintana's argument that she is entitled to King's PSI is based on a single statement made by the district during the sentencing hearing. At that sentencing hearing, the district court stated, “We're focusing on the victims in this case. But as part of that, having read Miss King's presentence report and seeing the interaction, I consider Miss King to be a victim of Miss Quintana.” (8/24/11 Tr., p.40, Ls.6-9.) Quintana contends that this statement demonstrates that the district court used King's PSI as an “aggravating factor” in its sentencing determination. (Appellant's brief, p.26.)

However, the court's comment does not demonstrate that it used any information from King's PSI that is not a part of the appellate record to aggravate Quintana's sentence. Quintana can therefore not show that the Idaho Supreme

Court's denial of her motion to augment prejudiced her ability to pursue the appeal. In fact, it appears that the portion of King's PSI that referenced Quintana's victimization of King was quoted in Quintana's PSI, which is part of the appellate record in this case:

Ms. King said she met Ms. Quintana in January 2010 in New Mexico and reported that within days of meeting, Ms. Quintana relocated to Idaho. Ms. King reported that she subsequently took a bus to Idaho so that she and Ms. Quintana could pursue a relationship.

Initially, Ms. King said her family was supportive of her relationship with Ms. Quintana but in June 2010 began disapproving of the relationship. According to Ms. King, her family did not like that Ms. Quintana was unemployed and pressured Ms. King to financially provide for her.

Ms. King stated that Ms. Quintana often told her, "If you loved me then you would..." do something to financially assist Ms. Quintana. Ms. King admitted that it was this pressure and wanting acceptance that led her to commit to the instant offense.

Ms. King acknowledged that Ms. Quintana was involved in all of the burglaries except one. She noted that Ms. Quintana was responsible for taking all the non-electronic items, including the jewelry, financial documents, and personal identification information.

Although they are co-defendants in this case, Ms. King admitted that she and Ms. Quintana have remained in contact with each other. She acknowledged that Ms. Quintana used to visit her in the Ada County Jail but noted that they avoided talking about this case.

Ms. King said she remained involved in a relationship with Ms. Quintana until April 12, 2011. Ms. King reportedly ended her relationship with Ms. Quintana because she does not want to be involved in any more legal trouble. At the time of her presentence interview, Ms. King admitted that she is still in love with Ms. Quintana but does not believe that it is in her best interest for them

to reunite. She noted, "I love her but I get in trouble with her. I'm 100% sure it is over. I don't want to get in anymore trouble. I just want to go to college to be a chef."

(#39516 PSI, pp.12-13.)

Further, Quintana's argument that the Idaho Supreme Court violated her due process rights lacks merit because Quintana was afforded the opportunity, prior to the settling of the appellate record, to designate not only the standard clerk's record, but also additional records necessary for inclusion in the clerk's record on appeal. I.A.R. 28(a) and (c). Therefore, Quintana was provided the process by which she could designate all documents in the record she believed were necessary for appeal.

Additionally, even after accessing and having the opportunity to review the sentencing hearing transcript, Quintana did not move to augment the record until months later, on the day her Appellant's brief was due on second extension. (3/6/12 Motion.) Granting Quintana's motion at that point would have necessitated further delay in the processing of this appeal. While I.A.R. 30 provides that a party may move the Idaho Supreme Court to add to the settled clerk's record, nothing therein creates a right to such augmentation. Therefore, the Idaho Supreme Court may consider other factors, such as timeliness, in its consideration of such motions. Quintana has failed to show that the ability to designate records for appellate review under I.A.R. 28, and to move for

augmentation under I.A.R. 30, was insufficient to afford her due process in her case.

Quintana has also failed to establish that denial of her request to augment the record on appeal denied her equal protection. There is nothing in the record that in any way indicates that the Idaho Supreme Court denied Quintana's request for King's PSI solely because she is indigent. The Idaho Appellate Rules require *any* party seeking augmentation to set forth a ground sufficient to justify the augmentation requested. I.A.R. 30. Quintana's motion to augment was denied because she failed to meet this minimal burden, imposed upon all parties, of showing that her co-defendant's PSI was necessary or even helpful in addressing appellate issues. Further, in this case, since King's PSI had already been prepared, no additional public funds would have been required to augment the record. Quintana's indigence was thus clearly not a factor in the denial of her motion to augment. The Idaho Supreme Court's order properly denied the motion to augment because Quintana failed to make a showing that any appellant – indigent or otherwise – would be entitled to augment the record as requested.

Quintana has failed to show that King's PSI was necessary to complete a record adequate to review her sentence, nor has she demonstrated that the denial of her motion to augment was in any way influenced or decided by her indigence. To the contrary, the record amply demonstrates that Quintana's

motion to augment was properly denied because she failed to show that the PSI she requested was necessary for adequate review of the district court's sentencing determination. Because Quintana has failed to show her due process and equal protection rights were implicated, much less violated, by the denial of her motion to augment, she has failed to show any basis for relief.

CONCLUSION

The state respectfully requests that this Court affirm Quintana's sentences and the district court's order denying her I.C.R. 35 motion.

DATED this 1st day of August 2012.



MARK W. OLSON
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 1st day of August 2012, served a true and correct copy of the attached BRIEF OF RESPONDENT by causing a copy addressed to:

BRIAN R. DICKSON
STATE APPELLATE PUBLIC DEFENDER

to be placed in The State Appellate Public Defender's basket located in the Idaho Supreme Court Clerk's office.



MARK W. OLSON
Deputy Attorney General

MWO/pm